

**ZONING BOARD OF ADJUSTMENT
MINUTES
MARCH 4, 2003
(Approved as amended 4/1/03)**

PRESENT: Forrest Esenwine, Chairman; Terry Knowles, Vice Chairperson; Jack Dearborn; June Purington; Leon Methot; Stuart Richmond; Naomi Bolton, Land Use Coordinator.

GUESTS: Sean Love; Debra Love; Priscilla Love; Lawrence Love; Rita Williams; Ted Williams; Paul Philibert; Mel Fogle; Harry Murray; Ginger Esenwine; Brenda L. Boisvert; Tania L. Wrzeszcz; Paul Dugas; Emile Bussiere

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine asked all the members present to introduce themselves. Forrest Esenwine informed those present that if anyone was present for the Herrick case, that has been withdrawn and will not be heard tonight. Forrest Esenwine and Terry Knowles removed themselves from the board for the first hearing due to the history of this case. Chairman Esenwine then turned the meeting over Leon Methot to be Acting Chairman for this hearing.

II. PUBLIC HEARINGS:

Case #6602 Town of Weare-CEO (Everett Stone)(Rehearing)
Administrative Appeal

Applicant is alleging that an error was made by the Board of Selectmen regarding the expansion of the Thibeault Corporation gravel permit without first receiving a special exception as required by the zoning ordinance.

Tax Map 409-104

Clough Park Road

Acting Chairman Methot pointed out that this case is a rehearing on an Administrative Appeal filed by the Code Enforcement Officer alleging that there was an error made by the Board of Selectmen in regards to the expansion to the Thibeault Corporation gravel permit without receiving a special exception. Acting Chairman Methot asked Mr. Emile Bussiere if he got the notice on the specific sites that will be argued tonight. Mr. Bussiere responded, yes he did, it

was in the general notice. Mr. Bussiere then introduced himself and stated that he is an attorney from Manchester and is here tonight representing Thibeault Corporation of New England, Inc. with reference to the motion for rehearing that they have filed before the board. Mr. Bussiere continued, "I want to state at the onset, yes I am familiar with the issues that you have apparently pointed as the ones you wish to address this evening. Being mindful of that, I still want the record to clearly indicate that our motion for rehearing is much broader than that. It addresses procedural issues and the issues of due process that we wish to come forward with. So I don't want to ignore those totally and I do want to state that it is my understanding, or it is my position that the entire proceedings over here are lacking in validity for the reasons that we have some evidence to the effect that the day after the Board of Selectmen met, that this board or some members of this board at least, met and resolved to their satisfaction by way of a consensus that the Selectmen had acted improperly and illegally. To that extent it appears as if it is likely the facts will speak for themselves that the Board generated this particular appeal. I don't think that our judicial system will tolerate the generation of a complaint that has been brought before the very same board after opinions have been expressed by the board to the effect that the action taken was wrong, that is a reasonably clear case of pre-judgement of an issue and to the extent that this complaint that has been generated in that fashion and to the extent that when this matter was heard in the first instance members of this very board, spoke and testified as to the facts, not witnesses in a quasi legal proceeding but actual members of the board. Having said that and intending to fully preserve our rights to the procedural issues I will then address specifically the items that you have to the extent that I can. My position on those items is simply that the Board of Selectmen had before them, some evidence supporting their decision. If they had some evidence as indicated in the minutes of the meetings then our position basically is that it is their call to determine the facts and if their facts were founded on evidence then this board cannot overturn that evidence. One of the members had mentioned as is reported in the minutes that, one of the members of the board, that he was aware of some operational activities on the site going way back when. So we feel that was sufficient and that this board cannot generate its own complaint and basically prejudge the case before the case even was here or before the case even existed, so that is our position."

Acting Chairman Methot stated, "I can appreciate all that. That is all good information and you're justified in presenting all that. We took this up with our own counsel and the advice given to us is that we stick to the facts that Thibeault Corporation needs, essentially we are rehearing what the Selectmen have heard and you need to prove to this board that you have vested rights and you are exempt from any of the zoning requirements for that particular extension of gravel operations. That is essentially what we are going to listen to tonight, anything beyond that is all good but we need to stick to just the particulars that we set out in our decision last month on what we would rehear."

Mr. Bussiere responded, "I understand that and I don't wish to present myself as unduly argumentative with you, I simply want to preserve my clients rights because as you all know, and I don't intend this as any form of a threat, it simply is a matter of the factual representations that there other places as well that consider these issues. I think it is essential for me to preserve my rights at this point. So that is pretty close to everything I'd have to say. I have one other comment on the overall situation that should probably be part of the record and that is this, when these operations, beyond any doubt, when these operations were first initiated it is not open to question as I understand it that this Town issued permits, at a time when there was no zoning ordinance, as a matter of fact in the year where zoning had been turned at the Town meeting. These permits were issued and reissued in a situation such as that, if you take the position that we have to prove there was an existing one and if you find as you are indicating from your previous decision, that you don't think that that was supported by the evidence before the Board of Selectmen then you have to further consider, the guidance that you indicated from your counsel it doesn't seem as if you will get there, you have to consider the due process issue that's presented when you have an existing business operating, lawfully, with permits from the Town and then you pass an ordinance that says you can't do this anymore in essence, you are going to be restricted to the very area that you are, you can't expand by a foot or by a yard or whatever. That presents a substantial due process issue, which as I say, I only wish to preserve by stating my case. Thank you very much. I will answer any questions that you may have of me, but I doubt that you have any."

Jack Dearborn asked, "did we not provide the applicant a description on what the rehearing was going to be conducted in?"

Emile Bussiere responded, "Sir, I acknowledged that at the beginning of my presentation."

Mr. Dearborn continued, "I just want to make sure."

Mr. Bussiere responded, "You commended our attention to particular points, I understand that."

Mr. Dearborn continued, "Which is under the grandfathering and that is effectively why we are here this evening to hear evidence to that effect under the RSA 155. Are you prepared to address those points?"

Mr. Bussiere responded, "I have addressed them to the extent that I have already stated sir, that it is our position that matter was before the Board of Selectmen when they voted 3 to 2 to grant this permit, which has been granted. It is our position that was based upon evidence that they had. When you have someone saying the light was red and somebody else saying it was green, which is what was going on that night before the board, if the matter is resolved and it is based on evidence that was there then I don't think that this board can initiate a

complaint and go on and procedurally dispose of it in the matter that it was and that is my position.”

Acting Chairman Methot responded, “we didn’t initiate anything. We could go back and forth all night on this. So a lawful complaint was made to this board, an appeal was made on their decision, it was heard, possibly some errors made, so now we are tonight, trying to correct all of that on your behalf because we don’t want to steal any of the rights that your client has, obviously. We want to make sure due process is followed, because we definitely don’t want to go in the wrong direction. Advice was given to us that the matters of fact that you need to supply to the board, as I said earlier we are rehearing what the Selectmen heard, is you need to provide the evidence according to the statute presented to us, then we make a decision based that, yes, he has a valid claim and he has vested rights and there is no exemption needed.”

Mr. Bussiere responded, “As I say I don’t want to appear to be unduly contentious with you. I’ve stated my position. I think I understand yours and I think you understand mine.”

Mr. Dearborn stated, “I just want to be very clear, so we don’t lose an opportunity. I believe you and your client requested a rehearing.”

Mr. Bussiere responded, “Based on the facts and contentions that I placed before you, I did.”

Mr. Dearborn responded, “And we granted a rehearing in the narrow scope of the points in 155 for grandfathership. Is that true?”

Mr. Bussiere responded, “yes.”

Mr. Dearborn continued, “so, that’s what we are allowed to hear on the case this evening, I believe. That is why we have been noticed and allowed that rehearing to take place. I guess the question is, I’m a little puzzled. I understand your points about wanting to state your retention of your clients rights and I don’t know that you lose any of that, but for this to effectively continue I think we have to hear something on 155 or we basically have heard everything, and at that point we can render a decision.”

Mr. Bussiere responded, “I’m not oblivious to your position at all. I understand what you are saying and I trust and hope that you understand what I’m saying and that’s about all I really have to say. I think that it is essential that I do, in such a proceeding here, that I advance my points so that they be preserved for potential review by other lawful authorities and so with that I understand that we could debate the situation with you but I don’t think that that is appropriate so I won’t say anymore. I do understand you.”

Mr. Dearborn responded, "I want to make sure, very clearly that we afforded your client an opportunity to rehear the evidence of grandfathership for this case. That is the intent and based on our counsel discussion that's what we wanted you to understand our position going forward for this evening. I just want to make it very clear that we are offering that opportunity."

Mr. Bussiere responded, "I will make one additional comment based upon the very words that both of you have spoken, you and the Acting Chairman, I look upon it, or we look upon it, as not so much a rehearing of the evidence that you or this board heard that is one where you are assuming to review, in our opinion inappropriately the evidence that the Selectmen heard and not that you heard, so that is a point to be preserved again for the future."

Mr. Dearborn asked, "where is it that we are inappropriate in hearing the evidence again, as a rehearing to the Selectmen, that is the point I am missing sir?"

Mr. Bussiere responded, "to some extent your board has some statutory authority to act as an appeal towards the review in a manner of an appeal, a decision of what might be considered, in this respect a lower court. In the judicial system that I have known, if the lower court had evidence upon which to base it's finding then factually the appeal board does not have a function of deciding that the factual basis was wrong. I can restate that if it is not clear to you, but I'm saying that this is like you are reviewing."

Mr. Dearborn interrupted and asked, "you are saying it is process versus the facts?"

Mr. Bussiere responded, "I'm saying that if there was evidence in the lower tribunal, in this case the Board of Selectmen being the lower tribunal, there was evidence to support that decision, and we say there was in this case, it was a contentious matter, ruled upon 3 to 2. That factual matter is not subject to a review by this board. That you would only be allowed to reverse legal errors and not factual errors if they're supported by the facts before the lower tribunal, the Board of Selectmen in this case."

Mr. Dearborn responded, "and that gets to a process issue, a process of law versus the facts."

Mr. Bussiere responded, "correct, that is my point. We thank you for the opportunity to express our views even if you don't particularly agree with them."

Acting Chairman Methot then asked if there were any:

Approving Abutters: NONE

Disapproving Abutters: NONE

Other Boards: NONE

Public At Large: NONE

Rebuttal of Applicant: Mr. Bussiere stated, "I'm not in the mood to rebut myself, thank you."

Being there was no further comments, questions or discussion, Acting Chairman Methot closed this hearing at 7:50 PM.

Chairman Esenwine and Vice Chairman Knowles retained their positions on the board for the remainder of the evening.

Case #0103 Mel & Charlane Fogle (Owner: Richard Maguire)

Variance, Article 17, Section 17.1.1

Applicants are requesting permission to set up their RV trailer with water and power.

Tax Map 410-191

Gettings Road (Private Road)

Mel Fogle was present and explained to the board that he is here tonight for a variance to place his 36' Nomad RV on the lot, drill a well and run power to the RV. Mr. Fogle went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: No environmental impact on the land. No trees will be cut unless deemed by power company to bring in power line.
2. That the granting of the variance will not be contrary to the public interest because: Land will be used for recreation purposes only.
3. The enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in it's environment for the following reasons: The property will not be used in any commercial operation.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: Property use will only be seasonal, spring through fall.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: Property is on a Class VI road that dead ends (Gettings Road). There are no other roads or right of ways this land will interfere with.
4. That by the granting this variance, substantial justice will be done because: The property value will be enhanced by adding a well and electric power. The placement of the RV will not be seen from Gettings Road.
5. That the use contemplated by the petitioner as a result of obtaining this variance will not be contrary to the spirit of the ordinance because: It will only be used spring through fall, for our family's use and to maintain peace and quiet.

Approving Abutters: NONE

Disapproving Abutters: Ted Williams stated that he has been a property owner in Weare for 19 years. He owns two lots that abut this property. His concern is that he feels that anyone living up there camping will be a devaluation of his property. He stated that as a resident for many years, that he has seen people turning a seasonal residence into a year round residence, he's seen the mess they make and how much of a problem it is to get the people out of there. The road is in such bad shape that a trailer won't be able to be taken in there because the beavers have the culvert all dammed up and the water is running over the road. The road has washed out several times. There are beavers on one side and a family of otters on the other side that are fun to watch. Mr. Williams stated that he would rather see someone build a house there, fix up the road, which will increase the property values in the area instead of devaluating it with a camper.

Chairman Esenwine read an e-mail from abutter Paul Bushey stating his opposition to trailers that become eyesores like Frenchies, which is still in the process of being cleaned up. Mr. Bushey further stated that he felt that the zoning laws were put in place to keep up property values and he would like his property to hold on to it's value.

Public At Large: Paul Philibert, 19 Gettings Road stated his concerns. He has lived on Gettings Road for 15 years. First, he pointed out that there will not be much peace and quiet on Gettings Road. It is a dirt bike trail, snowmobile trail and ATV trails. He currently stated that he is the road agent of Gettings Road and didn't feel that the road could take anymore traffic, it is in bad shape.

Other Boards: NONE

Rebuttal of applicant: Mr. Fogle stated that as he drives around that area there are several campers parked in peoples yards. He felt this was not any different. He stated that he was amazed at the eyesore that he has to walk through to get to his property and the Town has not done anything to clean it up. Mr. Fogle stated that he is also in agreement to do his share of upgrading the road.

Chairman Esenwine pointed out that if you own a piece of property, you can take that camper up there and camp for a certain amount of time then take it out of there and at a later time you could take it back there. Being there were no further comments, questions or discussion, Chairman Esenwine closed this hearing at 8:30 PM.

Case #0203 John L. & David L. Herrick

Special Exception, Article 24, Section 24.4.3

Applicants are proposing that a vacant parcel be used for a gravel operation.

Tax Map 406-067

River Road

Tim Bernier from TF Bernier faxed a letter to the Board on behalf of David & John Herrick requesting their application be withdrawn for the time being.

Case #0403 Harry R. Murray, LLS (Owner: Robert & Tania Wrzeszcz)

Equitable Waiver of Dimensional Requirement (Art. 18.2.3)

Applicant is requesting an equitable waiver of dimensional requirement to permit an existing house a setback of 6.49'.
Tax Map 412-234.005 199 Twin Bridge Road

Harry Murray was present to request per an equitable waiver of dimensional requirement from the sideline setback of the zoning ordinance to permit an existing house a setback of 6.49'. Mr. Murray stated that he discovered the nonconformity after the structure was substantially completed. The violation was not an outcome of the ignorance of the law or bad faith it was the result of a legitimate mistake. About 6 years ago, this subdivision was done and last year his partner found that it was done incorrectly. Mr. Murrays field crew set the bound at 220.21 feet where it should have been 200.21 feet, so there was a mistake of 20 feet. Mr. Murray stated that their first option was to try to do a lot line adjustment, but the Love's were not in favor of that, so this was the alternative route. Mr. Murray stated that he could have left it and not addressed it but felt that to protect his integrity he should come to the board and address it. Mr. Murray showed the board pictures to get a visual idea of the layout. Mr. Murray answered the four points of the dimensional requirement as follows:

1. Does the request involve a dimensional requirement, not a use restriction? Yes
2. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser. The nonconformity was discovered by surveyor years after construction. The abutter to the northeast, the Love's, are potentially most impacted. However, the closer proximity to the property line of the subject house should in no way affect the full enjoyment and use of this abutters land. It should no way affect the value of the surrounding properties. We feel that the spirit of the zoning regulation is still met. The separation between the house to the southwest is hundreds of feet, and the separation from the abutters house (Love) to their abutter to the northeast is much more than the required distance. The setback from the road is over 190 feet, and as stated before the separation from the subject house to the abutting garage (Love's) is over 50 feet.
3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. The distance to the northeast abutters garage to the subject house is greater than 50'. There is a natural gas tank on the abutting lot that will be moved on to the subject lot.
4. Explain how the cost of correction far outweighs any public benefit to be gained: Since the abutter will not cooperate in a lot line adjustment the correction would require moving the house which would be very costly and disruptive to the family.

Approving Abutters: The Love's stated that they do approve it but they would like to make sure that the septic and the leachfield is enough away from the lot line.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

The owner of the property then asked about how close a fence can be put in the 6.49'. The board explained that that is a building department question, and not what we are here for tonight.

Rebuttal of Applicant: NONE

Being there were no further comments, questions or concerns, Chairman Esenwine closed this hearing at 8:50 PM.

Case #0503 Harry R. Murray, LLS (Owner: William Wilusz)

Variance, Article 26, Section 26.3.3

Applicant is proposing not to pave the access road to the multi-family home, but to meet all other road specifications.

Tax Map 109-020

South Stark Highway

Harry Murray was present and explained that Mr. Wilusz was approved for a special exception for a four unit apartment building off Route 114. Mr. Murray stated that he had an older version of the zoning ordinance and didn't realize that they were going to have to make a Class V road that was paved. Mr. Murray stated that near approval of the site plan it was discovered that that the road needed to be built to Class V specifications. Mr. Murray stated that the Planning Board stated that they were going to send a letter to this board saying that they disagreed with the application or the applying the rule that every single access to every single commercial development had to be a Class V road, 24 foot pavement, meaning State standards, that was excessive for this small construction project. Mr. Murray stated that what Mr. Wilusz was hoping for was to let him not pave the road, but to build the road with the proper radius' and proper construction of the Class V road width and every other respect. Mr. Murray proceeded through the five points of hardship as follows:

1. That there will not be a diminution of value of surrounding properties as a result of the granting of this variance because: The constructed building will be of the same or better construction quality as surrounding buildings, be used for residential use, will not be visible from the road or the immediate abutters, and will be constructed hundreds of feet from the nearest buildings. The access road will be well constructed to state specifications at the entrance, and town specifications for the remainder with the exception of pavement. It will appear to be an ordinary driveway to the abutting owners, and should in no way diminish their property values.
2. That the granting of the variance will not be contrary to the public interest because: It will provide needed safe and affordable housing in a pleasant surrounding that will foster the health and welfare of families. The proposed road would be very safe because it meets the town standards in width, and minimum curve radius. The access road will have a low traffic volume with only 4 apartment units. Strict compliance of the zoning regulation would make this affordable housing impossible.
3. That the enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:

- a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The characteristics of the land are such that the road can be constructed with very little slopes (less than 4%), and with proper radius curves making the road safe without the need of pavement. Also, the length of the road is short (about 1,000 feet).
- b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reason: The reason for road pavement is to improve safety and maintainability of the road. In this case, as already mentioned, safety is not a concern because of the characteristics of the land. The road is nearly flat and there will be no high speed driving. In addition maintainability is not a concern from the town point of view because there is not a possibility in the future that the road could become a town road.
- c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: Not building the road with pavement will not affect the public or private rights of others. The public's right to safety and accessibility will not in any way be affected. The rights of the abutters will in no way be affected.
4. That by granting this variance, substantial justice will be done because: Bill Wilusz has a reputation of building houses and small apartments that are of good quality and well maintained. This provides much needed low-income housing for the many families that need it.
5. That the use contemplated by the petitioner as a result of obtaining this variance will not be contrary to the spirit of the ordinance because: The road as constructed would be safe, since it has minimal slopes (4% or less), it has curves that meet the road standards, and the road width and construction materials meet the standard, with the exception of pavement. The Weare Fire Department agreed that an unpaved road 2 feet narrower than what we propose would meet their requirements. The town Planning Board has agreed that what we propose is agreeable with them, and they suggested we seek a variance for the project. They have further stated that the zoning regulations for road construction for commercial projects should in the future be modified to be more flexible to accommodate varying conditions. That it's not reasonable or necessary that all projects meet the standard of the State of NH and Town road construction specifications. In this case we are attempting to provide affordable safe, housing and strict compliance to the zoning regulation would undermine this effort.

Jack Dearborn stated that the letter from the Planning Board indicates that they were supportive of a 22' road instead of a 24' road and 2" of pavement instead of 3", but nowhere does it indicate NO pavement. Mr. Dearborn continued that Mr. Wilusz might have changed his mind but the Planning Board didn't. Mr. Murray

stated that the reason for the change was the cost of paving this road is too expensive.

The board discussed with Mr. Murray that when Mr. Wilusz was well aware of the road issue the last time he was before the board requesting a special exception for the 4 unit apartment building. Frontage on Route 114 was discussed and he had only 39' of actual frontage but had an 11' easement to make the frontage acceptable. The board stated that placing the apartment building towards the lake is driving up the cost. The board then suggested the possibility of shortening the road and build a shorter road.

Chairman Esenwine stated that he understands what he is saying but the fact remains he came to us for a special exception for a plan. The board looked at it, asked him about it, we told him what he could do and he agreed to it fine and that's the way it went down. Now he is coming back saying that I can't do that it is going to cost too much money and you have to help me with my commercial venture, since I don't have the money to do it and in order to make money you have to make it so that I can make money and that is not the job of this board. Mr. Murray stated that he didn't understand that and didn't know Mr. Wilusz was aware of this before. Chairman Esenwine then asked if there were any:

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Rebuttal of Applicant: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 9:12 PM.

III. CASE DECISIONS:

Terry Knowles moved to move to render our decisions out of order and that we move Case #6602 for consideration last, June Purington seconded the motion, all in favor.

Chairman Esenwine explained to those present that when we discuss these issues, a motion is always made in the positive to accept the case, so yes means yes and no means no.

Case #0103 Mel & Charlane Fogle (Owner: Richard Maguire)

Variance, Article 17, Section 17.1.1

Applicants are requesting permission to set up their RV trailer with water and power.

Tax Map 410-191

Gettings Road (Private Road)

The board proceeded through the five points of hardship. Point #1: Terry Knowles moved to accept point #1, Leon Methot seconded the motion. Discussion: Mrs. Knowles stated that she felt that the applicant was non responsive. Mrs. Knowles further stated that she didn't see any evidence that

there would be no diminution of surrounding property values. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #2: Terry Knowles moved to accept point #2, June Purington seconded the motion. Discussion: Jack Dearborn stated that he is not sure if this is where it fits but he is going to state it and the board can figure out if it is right or not. The issue of recreational land is a question of the use of a property as a dwelling. The issue of the maturity of the subdivision is what the board looks at as well. This subdivision appears to have two or three lots built on which is at the beginning of the road and not the end of the road, which is certainly the minority. Mr. Dearborn felt that this falls into an issue of an abandoned subdivision. Mrs. Knowles stated that the answer to number two all by itself, the board would not have a problem with, but she does have a question about the statement that was submitted. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #3a: June Purington moved to accept point #3a, Leon Methot seconded the motion. Discussion: Mrs. Purington stated that the response that the property will not be used in any commercial operation, it can't be, it is zoned RA. So that doesn't appear to be an issue at all. Forrest Esenwine stated that he didn't think the response addresses the question. Terry Knowles stated that it should be addressing the unique setting of the property and it's environment and how that applies to the use that the applicant is desiring. Leon Methot added that he does have reasonable use of the property, that stands just as it sets. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #3b: Leon Methot moved to accept point #3b, June Purington seconded the motion. Discussion: Forrest Esenwine stated that he didn't think the answer applies to point b. Mr. Dearborn stated that if we want to make it apply in the form that it is offered then we can make that a covenant restricting building. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #3c: Terry Knowles moved to accept point #3c, June Purington seconded the motion. Discussion: Forrest Esenwine stated that he is not convinced that the response won't impact negatively on others. The board pointed out that we had some disapproving abutters. Mr. Dearborn stated that if someday he wanted to get greater than 50% of the landowners on that road to go for a betterment assessment to the Selectmen then the other minority owners on that road would have to go along with it. Chairman Esenwine stated that he didn't think it is this board's case to make in their favor. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #4: Leon Methot moved to accept point #4, Jack Dearborn seconded the motion. Discussion: Mr. Dearborn stated that he thinks that his earlier comment really applies to this one. The issue of a subdivision that sat for about 30 years and through the years could have been acted upon sooner and had a mature subdivision there, then the majority of the property would still be constructed then the people should expect the same rights. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Point #5: Terry Knowles moved to accept point #5, June Purington seconded the motion. Discussion: Mrs. Knowles stated that again with the spirit of the zoning

ordinance, the response did not answer the question and the applicant should have addressed the use directly at the question. The board took a vote as follows: Unanimous against (Methot, Purington, Knowles, Esenwine, Dearborn). Terry Knowles then moved approval of Case #0103, Leon Methot seconded the motion. Vote: 0 in favor and 5 against (Methot, Purington, Knowles, Esenwine, Dearborn) the motion fails and the variance is not granted. Chairman Esenwine stated that in order to get the variance the applicants need to meet all five points of hardship. Chairman Esenwine that pointed out that the applicant has the right to appeal.

Case #0203 John L. & David L. Herrick
Special Exception, Article 24, Section 24.4.3
Applicants are proposing that a vacant parcel be used for a gravel operation.
Tax Map 406-067 River Road

The board accepted the letter from Tim Bernier requesting this application be withdrawn.

Case #0403 Harry R. Murray, LLS (Owner: Robert & Tania Wrzeszcz)
Equitable Waiver of Dimensional Requirement (Art. 18.2.3)
Applicant is requesting an equitable waiver of dimensional
requirement to permit an existing house a setback of 6.49'.
Tax Map 412-234.005 199 Twin Bridge Road

Terry Knowles pointed out the four part test that the applicant needs to meet for the equitable waiver. The four tests are as follows. One is that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative or municipal agent until after the structure in violation had been substantially completed. Two is that the violation was not an outcome of ignorance of the law or ordinance, failure to acquire, obfuscation, misrepresentation, or bad faith. Three is that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area. Four is that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained. Jack Dearborn moved to approve Case #0403 as presented, Leon Methot seconded the motion. Discussion: The board pointed out that the structure is out and completed. It was only after the fact that it was discovered a line had been drawn incorrectly by the surveyor and was off by 20 feet. It was claimed as an error and not something that was being done deliberately or in violation of the law. The board agreed that the house originally was compliant to the error line. The board also felt that it meets all four tests. Jack Dearborn moved to approve Case #0403, Leon Methot seconded the motion. Vote: Unanimous in favor (Methot, Purington, Knowles, Esenwine, Dearborn) and the waiver is therefore granted.

Case #0503 Harry R. Murray, LLS (Owner: William Wilusz)
Variance, Article 26, Section 26.3.3
Applicant is proposing not to pave the access road to the multi-family home, but to meet all other road specifications.
Tax Map 109-020 South Stark Highway

Before the Board began discussing the five points of hardship. Mr. Murray stated that he will tell Mr. Wilusz that he didn't have a good argument. The board then asked Mr. Murray is he requesting to withdraw the application. Mr. Murray responded, yes he would like to withdraw this application.

Forrest Esenwine and Terry Knowles stated that they will be removing themselves from the board for the decision on the next case. Both Mr. Esenwine and Mrs. Knowles moved to the public side of the table. Acting Chairman Methot took over the Chairperson position.

Case #6602 Town of Weare-CEO (Everett Stone)(Rehearing)
Administrative Appeal
Applicant is alleging that an error was made by the Board of Selectmen regarding the expansion of the Thibeault Corporation gravel permit without first receiving a special exception as required by the zoning ordinance.
Tax Map 409-104 Clough Park Road

Acting Chairman Methot stated that the applicant was duly noticed on what he needed to present and after insurmountable requests to produce that information the applicant failed. Jack Dearborn stated that wants the record to stand on what he has already got from the Selectmen. June Purington stated that when this board read the minutes from the Selectmen's meeting we could not find any evidence of his having proof that they were grandfathered. Mr. Dearborn stated that was a decision that the board made. The board offered him a rehearing on the case specifically regarding RSA 155 and he chose not to respond to the conditions of the appeal. Acting Chairman Methot pointed out that in fact he was willing to address other issues that have no bearing on the whole situation as we were given guidance on. Mr. Dearborn pointed out that he wanted to get that on the record and not have to go through the 155 test with this board. Stuart Richmond then asked so what the board is voting on here is to approve the administrative appeal. June Purington moved to grant the appeal on Case #6602, Stuart Richmond seconded the motion. After a little bit of a discussion on how the motion was made, Mrs. Purington withdrew her motion to grant the appeal and Mr. Richmond withdrew his second. Leon Methot stated that the rehearing, the hearing itself that we heard tonight was, did the applicant prove his vested rights in the property which exempts him from requiring a special exception to expand his gravel operation. Jack Dearborn then read out loud the notice that was sent to Mr. Bussiere for the rehearing. Leon Methot made a motion that the applicant has met

the test and has submitted evidence to show that they have met the requirements of RSA 155E:2 I (b) and (d) 1-4, Stuart Richmond seconded the motion. Vote: 0 in favor, 4 opposed (Methot, Purington, Dearborn, Richmond). The reason for the denial was that the applicant chose not to address RSA 155E.

IV. OTHER BUSINESS:

FEBRUARY 11, 2003 MINUTES: Forrest Esenwine moved to approve the February 11, 2003 minutes as written, June Purington seconded the motion, all in favor, except for Terry Knowles who abstained and then fell from her chair.

V. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn at 9:45 PM, Leon Methot seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator